Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 68 of the Commission's Rules	)	CC Docket No. 96-28
	)	

COMMENTS OF 3COM CORPORATION

3Com Corporation, by its attorneys, respectfully submits its comments in response to the Commission's *Public Notice* seeking comment on whether the FCC "should clarify 47 C.F.R. § 68.2(j)(3) as requiring re-registration of previously registered equipment after May 19, 1999."[1/]

In summary, the Commission should *not* require re-registration of previously registered equipment that is manufactured *prior to* May 19, 1999. As shown below, rule section 68.2(j)(3) requires this result. 3Com herein proposes an amendment to this rule that should eliminate the current uncertainty.

*1. **3Com's Recommendation.*** Rule section 68.2(j)(3) should be amended to provide that "Terminal equipment, including premises wiring and protective apparatus (if any) may be manufactured (including additions to existing systems) up to May 19, 1999, without registration of any type of terminal equipment involved, providing that the terminal equipment is of a type directly connected to the network as of April 20, 1998."

In summary, 3Com urges that the May 19, 1999 deadline refer to the manufacture of equipment, rather than installation. 3Com fully supports the new standard and the Commission's

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[1/] *Common Carrier Bureau Seeks Comment On Compliance Deadline For Harmonization Order Regulations, Public Notice,* DA 99-341, released February 17, 1999 ("*Public Notice*"). The *Public Notice* contains a typographical error. The date of April 20, 1997, which the *Public Notice* states as appearing in 47 C.F.R. § 68.2(j)(3), actually is April 20, 1998.

goal of harmonizing standards with Canada. As described below, the problem relates to the timing of the new standard.

*2. **Description of the Problem.*** The problem is that the Commission's current interpretation of rule section 68.2(j)(3) would require 3Com to recall and scrap $50 million to $100 million worth of modems that currently are in production and distribution channels. The Commission's current interpretation also would cause enormous financial hardship to other modem manufacturers and OEMs (original equipment manufacturers) who build these modems into PCs and other products.

The modems in question do not harm the network, were registered and installed as of April 20, 1998, and are very popular with end users and OEMs. For example, attached hereto is an April 1999 ranking by PC World of the top 10 modems. PC World's number one modem -- the IBM 56K Modem Internet Kit -- contains a 3Com modem that would have to be recalled and scrapped under the current interpretation of rule section 68.2(j). 3Com's modems described here are also used by Gateway, Sun Microsystems, Acer Computing and numerous other OEMs in constructing their respective products.

*3. **Cause of the Problem.*** The problem resulted from confusion over the nature of the deadline imposed by rule section 68.2(j)(3). The Commission originally pegged its deadline for the new standard to a cessation in the manufacture of current equipment, but subsequently pegged the deadline to the equipment's installation. Production and distribution planning premised on the Commission's initial advice has resulted in substantial amounts of product that will be installed -- absent a devastatingly costly recall -- after the May 19, 1999 deadline.

This confusion came about because the applicable rule does not fulfill the text of the promulgating order. In its *Report And Order,*[2] the Commission noted comments of Lucent that the FCC should provide grandfathering for existing equipment in order to avoid re-registration of previously registered equipment. This position was supported by other commenters and opposed by no one. *Id.* The Commission accepted these comments and ruled that "new rule 68.2(j) reads as follows:

> Terminal equipment and systems registered prior to (**date these rules are effective**), do not have to be re-registered unless subsequently modified. All new equipment and systems manufactured after (**18 months after effective date**) must conform to the requirements." *Id. (emphasis in original).*

Therefore, the FCC ruled that existing equipment could be manufactured until 18 months after the effective date of the new rule. The new rule became effective June 8, 1998. *See Public Notice.* Therefore, according to the Commission's *Report And Order*, 3Com should be able to manufacture existing modems until 18 months after June 8, 1988, or December 8, 1999.[3]

The rule, as finally published,[4] did not conform to this language and instead set a deadline of May 19, 1999, for installation of current equipment. In 3Com's consultations last year with the FCC, regarding 3Com's production planning for the new standard, the FCC informally advised that this rule meant that 3Com could manufacture current equipment until May 19, 1999. 3Com found this advice to be consistent with its understanding of the Commission's intent in promulgating rule

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[2] *In the Matter of Amendment of Part 68 of the Commission's Rules, Report And Order,* 12 FCC Rcd 19218, 19223-24 (1997).

[3] The Commission also announced, in the *Regulatory Flexibility* section of this *Report and Order*, that "We are adopting Section 68.2(j), which states that equipment already registered under the current rules does not need to be re-registered under the new rules." *Id. at 19226.*

[4] *See Amendment of Part 68 of the Commission's Rules, Report and Order,* 62 FR 61654 (1997).

section 68.2(j) and therefore accepted the advice and used it to plan 3Com's production schedules. Based on this informal advice, 3Com has set its production schedules to stop producing the current modems just before May 19, 1999. However, 3Com has been informed just recently that the Commission now might construe rule 68.2(j) to prohibit the installation of current equipment after May 19, 1999. As noted above, a very large amount of product is in production or distribution channels and would have to be recalled and scrapped if this interpretation were to prevail.

3Com notes, for the record, that the Commission's current interpretation appears to violate the requirements of the Administrative Procedures Act[5] and other notice and comment obligations. Specifically, the Commission's current deadline (May 19, 1999 vs. December 8, 1999 as specified in the *Report and Order*), and current interpretation (deadline applies to installation of product in end user's premises vs. manufacture as specified in the *Report and Order*) conflict with the text of the *Report and Order*. The *Report and Order* has not been enforced, and the current rule was promulgated without notice and comment. The Commission's recent request for comments on re-registration, *see Public Notice,* does not cure the procedural defect because equipment manufacturers and OEMs have detrimentally relied on the Commission's previous advice.

As noted above, 3Com supports the Commission's policy of harmonizing standards. Therefore, 3Com proposes, as a compromise, the above stated formula whereby the manufacture of current product may continue until May 19, 1999.[6]

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[5] *See* 5 U.S.C. §553.

[6] As used herein, the term "manufacture" refers to what 3Com does with modems (the fabrication of a product from raw materials) and does not refer to what OEMs do with modems (the assembly of components and products).

*4. **Feasibility of Basing Deadline on Manufacture Date.*** Basing a deadline on the manufacture of a product, rather than its installation, promotes certainty in the supply chain and is more readily enforceable. Under the current situation, no one in the production and distribution channels has a date certain by which they must stop manufacturing, using or selling the current modems. Manufacturers, OEMs and retailers face considerable uncertainty because they do not know exactly how long it would take a product to reach the end user or when the customer will install the product. For this reason, no one knows whether the existing modems or PCs, that are now in the production or distribution chain, are compliant. The tendency therefore would be to unnecessarily return or scrap equipment that is in high demand by end users and does not harm the network.

By contrast, the date of manufacture can be readily ascertained through, among other things, examination of the uniform product code (bar code) affixed to each product. Basing the deadline on the manufacture date would provide a date certain as well as the ability to verify whether a product is compliant. Similarly, in an enforcement situation, the Commission might find it difficult to discern exactly when a given product was installed, and by whom. However, the bar code seemingly "tells all" and lends greater accountability.

WHEREFORE, 3Com respectfully requests that rule section 68.2(j)(3) be amended as first set forth above and that no re-registration be required for previously registered equipment that is manufactured prior to May 19, 1999.

RESPECTFULLY SUBMITTED,

3COM CORPORATION

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TOP 10 MODEMS

PC WORLD

1	[illegible]						
2	Zoom FaxModem 56K PCI Dualmode 800/631-3116 www.zoomtel.com	Jan 99	$64	79	4:16/5:40	FEATURES: Supports K56flex, PCI card, Rockwell chip set, MNP-10EC error control, V.80 videoconferencing, distinctive ring, voice mail, Communicate software. SUMMARY: Top choice for SOHO on a strict budget has voice features and is backed by long support hours. But it runs a bit slow on 56-kbps downloads.	670
3	Diamond Multimedia SupraExpress 56I 800/468-5846 www.diamondmm.com	[illegible]					
4	Viking V.90 56K ISA Modem 800/338-2361 www.vikingcomponents.com	Feb 99	$60	78	3:23/5:41	FEATURES: Supports K56flex, 16-bit ISA card, Rockwell chip set, voice mail, speakerphone, QuickLink III software. SUMMARY: ISA modem sells for an exceptionally low price and sports great 56-kbps performance. Viking offers 24-hour support, but the modem's skimpy manual isn't much help.	672
5	[illegible]						
6	Digicom Systems Modem Blaster Flash 56 PCI 800/833-8900 www.digicomsys.com	NEW	$60	77	3:54/5:39	FEATURES: Supports K56flex, PCI card, Rockwell chip set, MNP-10, V.80 videoconferencing, distinctive ring, voice mail, speakerphone, ASVD, Caller ID, QuickLink Message Center III software. SUMMARY: Full-featured modem has a low price and daily 14-hour on-call support. Thorny installation and middling manuals hold it back.	674
7	[illegible]						
EXTERNAL V.90 MODEM							
1	Diamond Multimedia SupraExpress 56e 800/468-5846 www.diamondmm.com	Feb 99	$120	80	3:23/5:40	FEATURES: Supports K56flex, Rockwell chip set, V.80 videoconferencing, distinctive ring, voice mail, Caller ID, permanently attached serial cable, FaxTalk Communicator software. SUMMARY: The fastest external modem here is affordable, easy to install, small and portable, and backed by long support hours.	676
2	NewCom V.90 56K External Data/Fax Modem 800/[illegible] www.newcom.com	NEW	[illegible]			[illegible]	
3	Digicom Systems Modem Blaster Flash 56 II External 800/833-8900 www.digicomsys.com	NEW	$100	76	3:44/5:40	FEATURES: Supports K56flex, Rockwell chip set, MNP-10, V.80 videoconferencing, distinctive ring, voice mail, speakerphone, ASVD, Caller ID, serial cable, QuickLink Message Center III software. SUMMARY: Affordable modem performs well and carries plenty of features, but documentation needs improvement.	678

Best Buy | For reviews of products that didn't make the chart, visit www.pcworld.com/ttl0modems | All products: 906

PC WORLD LAB

HOW WE TEST We test V.90 (56-kbps) and V.34 (33.6-kbps) performance over a Telecomm Analysis Systems simulated phone network. We connect each modem to two common Internet service provider modems—Ascend's Max 6000 and 3Com's Total Control. Using each ISP modem, we perform two tests. In the Network Model Coverage test, we send a .zip file over several different line conditions. In the File Type test, we send a mix of four files—graphics, text, program, and compressed—over one line condition. We average the results for the two ISP modems to calculate NMC and FT scores, which make up, respectively, 60 and 40 percent of the total performance score. Data based on tests designed and conducted by the PC World Test Center. All rights reserved.

EXTERNAL MODEM PRICES hit an all-time low this month: NewCom's latest entry, which debuts in second place, sells for a modest $76, making it the least expensive modem of its class ever to make the chart. Among internal modems, IBM's 56K Modem Internet Kit remains the clear choice for the home office, thanks to its affordable $79 price, terrific 56-kbps performance, and around-the-clock technical support. ■

CERTIFICATE OF SERVICE

I, Terri L. McMillan-Solomon, hereby certify that on this 17th day of March, 1999, I caused to be served by hand delivery, copies of the **COMMENTS OF 3COM CORPORATION** to the following:

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